no usage or custom can be set up for the purpose of controlling the rules of law. To the same effect see *Thompson* v. *Ashton*, 14 Johns 316; *Bevine* v. *Dord*, 5 N. Y. 95; *Wheeler* v. *Newbold*, 15 N. Y. 393; *Higgins* v. *Moore*, 34 N. Y. 417; *Duguid* v. *Edwards*, 50 Barb. 288.

As to how well settled in New York is the rule at common law, that a notary must *personally* present a bill which he intends to protest, it was held in *Onondaga Bank* v. *Bates*, 3 Hill 53, that a certificate of a notary that he *caused* a note to be presented at maturity was not sufficient evidence of a demand, the court construing the certificate to mean that presentment had not been made by the notary in person. And NELSON, J., declared his opinion that present ment by a clerk was not authorized by law. This decision was approved in *Hunt* v. *Maybee*, 7 N. York, 266. To the same effect is *Warnick* v. *Crane*, 4 Den. 460. These cases were decided under the statute of New York of 1853, which made a notary's protest of an inland bill evidence to the same extent as in the case of a foreign bill. These cases may not, therefore, be directly in point, but it is to be observed that the court, in giving the opinion above, concede the ground that at common law a no tary must present in person, and therefore this point becomes immaterial as upholding the decision.

H. G. A.

Supreme Court of the United States.

SEMMES, ADMINISTRATOR OF LUCKETT, *v.* CITY FIRE INS CO. OF HARTFORD.

A policy of insurance provided that no suit or claim thereon should be sustainable unless made within twelve months after the loss; and that in any such suit commenced twelve months after the loss the lapse of time should be conclusive evidence against the validity of the claim. A loss occurred and the insured was prevented by the war from bringing suit within twelve months. *Held*, that the war having rendered compliance impossible, the presumption from the lapse of time was thereby destroyed and did not revive by the cessation of the war; and the insured might recover if his action was brought within the period of the statute of limitations.

The period of the statute of limitations is to be computed by excluding the time of the war.

ERROR to the Circuit Court of the United States for the District of Connecticut. The opinion of the Circuit Court is reported in 8 Am. Law Reg., N. S. 673.

The opinion of the court was delivered by

MILLER, J.—This is an action on a policy of insurance, commenced on the 21st day of October, 1866, in the Circuit Court of the United States for the District of Connecticut, for a loss which occurred on the 5th day of January, 1860.

The only plea of the defendant is that the action was not

brought within twelve months after the loss occurred, as provided in one of the conditions of the policy. To this plea there are replications setting up, among other things, that the late civil war prevented the bringing of the suit within the twelve months provided in the condition, the plaintiff being a resident and citizen of the State of Mississippi, and the defendant of Connecticut, during all that time.

There is in the record a paper purporting to be an opinion of the court and a finding of the facts by the court, which finding is so mixed up with the argument of the court in support of its decision that, under the construction so frequently given to the act of March 3, 1865, the paper cannot be treated as a part of the record, and can give us no aid in deciding the case, except what may be derived from the able argument of the learned judge who decided it below.

Fortunately, the pleadings themselves set up facts of which this court can take judicial notice sufficient to enable us to decide on the alleged error of the record, which is that the plea of defendant was held to present a good bar to the action, notwithstanding the effect of the war on the rights of the parties.

The Circuit Court, in arriving at this conclusion, held, first, that the condition in the contract, limiting the time within which suit could be brought, was like the statute of limitation susceptible of such enlargement in point of time, as was necessary to accommodate itself to the precise number of days during which the plaintiff was prevented from bringing suit by the existence of the war. Ascertaining this by a reference to certain public acts of the political departments of the Government, the court found that there was, between the time at which it fixes the commencement of the war and the date of plaintiff's loss, a certain number of days, which, added to the time between the close of the war and the commencement of the action, amounted to more than the twelve months allowed by the condition of the contract.

It is not necessary, in the view which we take of the matter, to inquire whether the Circuit Court was correct in the principle by which it fixed the date, either of the commencement or cessation of the disability to sue, growing out of the

events of the war. For we are of opinion that the period of twelve months which the contract allowed the plaintiff for bringing his suit, does not open and expand itself so as to receive within it three or four years of legal disability created by the war, and then close together at each end of that period so as to complete itself, as though the war had never occurred.

It is true that, in regard to the limitation imposed by sta tute, this court has held that the time may be so computed but there the law imposes the limitation and the law imposes the disability. It is nothing, therefore, but a necessary legar logic that the one period should be taken from the other. If the law did not, by a necessary implication, take this time out of that prescribed by the statute, one of two things would happen; either the plaintiff would lose his right of suit by a judicial construction of law which deprived him of the right to sue, yet permitted the statute to run until it became a com plete bar, or else, holding the statute under the circumstan ces to be no bar, the defendant would be left, after the war was over, without the protection of any limitation whatever. It was therefore necessary to adopt the time provided by the statute as limiting the right to sue, and deduct from that time the period of disability.

Such is not the case as regards this contract. Defendant has made his own special and hard provisions on that subject. It is not said as in a statute that plaintiff shall have twelve months from the time his cause of action accrued to commence suit, but twelve months from the time of loss; yet by another condition the loss is not payable until six days after it shall have been ascertained and proved. The condition is that no suit or action shall be sustainable unless commenced within the time of twelve months next after the loss shall occur, and in case such action shall be commenced after the expiration of twelve months, next after such loss, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim. Now, this contract relates to the twelve months next succeeding the occurrence of the loss, and the court has no right, as in the case of a statute, to construe it into a number of days equal to twelve months, to be made up of the days in a period of five years in which plain-

tiff could lawfully have commenced his suit. So also if the plaintiff shows any reason which in law rebuts the presumption, which, on the failure to sue within twelve months is by the contract made conclusive against the validity of the claim, that presumption is not revived again by the contract. It would seem that when once rebutted fully nothing but a presumption of law or presumption of fact could again revive it. There is nothing in the contract which does it, and we know of no such presumption of law. Nor does the same evil consequence follow from removing absolutely the bar of the contract that would, from removing absolutely the bar of the statute, for when the bar of the contract is removed there still remains the bar of the statute, and though plaintiff may show by his disability to sue a sufficient answer to the twelve months provided by the contract, he must still bring his suit within the reasonable time fixed by the legislative authority, that is, by the statute of limitations.

We have no doubt that the disability to sue imposed on plaintiff by the war relieves him from the consequences of failure to bring suit within twelve months after the loss, because it rendered a compliance with that condition impossible, and removes the presumption which that contract says shall be conclusive against the validity of the plaintiff's claim. That part of the contract therefore presents no bar to plaintiff's right to recover.

As the Circuit Court founded its judgment on the proposition that it did, that judgment must be reversed, and the case remanded for a new trial.

Supreme Judicial Court of Maine.

JOSEPH SYMONDS *v.* CHARLES F. BARNES.

In order to avoid a defendant's discharge under the United States Bankrupt Act of 1867, on the ground that the schedule verified by oath did not contain a statement of his debt to the plaintiff, and that the latter had no notice of the proceedings in bankruptcy, and did not prove his claim, it must appear that the omission was fraudulent and the affidavit willfully false.